IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.386 OF 1995

Shri R.D.Avhad,
of Pune, Indian Inhabitant,
residing at Ganpati Housing
Society, 41, Gujarat Colony,
Kothrud,
Pune-411 029. .. Petitioner.

Vs

1. The Maharashtra State Farming
Corporation Ltd, 270
Bhamburda Senapati Bapat Marg,
Pune-411 016.

2. The Hon'be Minister for
Revenue and Forest and
Chairman of Maharashtra State
Farming Corporation Ltd,
Mantralaya, Bombay-400 032.

3. The Additional Chief Secretary,
to Government of Maharashtra,
Revenue and Forest Department,
Mantralaya, Bombay-52. .. Respondents.

Mrs Meena H.Doshi, for the petitioner.

Shri Prashant Naik, for respondent no.1.

Respondent no.2, though served absent.

Shri Y.D.Mulani, AGP for respondent no.3.

CORAM : B.H.MARLAPALLE & D.B.BHOSALE,JJ.
DATE : March 23rd, 27th & 28th, 2006.

ORAL JUDGMENT : (PER B.H.MARLAPALLE,J.)

1. In this petition, the petitioner has brought in question the order of termination dated 28.9.1993 passed

by the management of the respondent no.1-corporation on account of abolition of the post of Controller-Stores and Purchase held by the petitioner and the subsequent order dated 30.9.1993 informing the petitioner that he stood terminated from the service of respondent no.1 from the afternoon of 30.9.1993.

2. The petitioner was employed as an Assistant by an order dated 18.10.1972 in the Sales and Purchase Department at the Head Office of respondent no.1 on an initial pay of Rs.190/- per month. He was thereafter confirmed and promoted to the post of Superintendent in the Stores and Purchase Section as per the order dated 15.4.1978. By the further order dated 30.6.1979, he was appointed as In-charge Controller of Stores and Purchase with effect from 1.7.1979 in the pay scale of Rs. 440-940 (pre-revised). He was offered the post of Controller of Stores and Purchase as per the Board resolution dated 9.9.1980 in the pay scale of Rs.1100-1600. The petitioner holds the qualifications of B.Sc., LL.B with a Post Graduate Diploma in Materials Management and Diploma in Taxation Laws.

3. Respondent no.1 is a company incorporated under the Companies Act,1956 with its registered office at Pune and is a Government company within the meaning of section 617

of the said Act as the entire shareholding of the company is held by the State of Maharashtra. The agricultural land declared surplus on the enforcement of the Maharashtra Agricultural Lands (Ceilings and Holdings) Act, 1961 in different parts of the State was handed over to respondent no.1 for cultivation/management and for which it was incorporated. In addition to the Board of Directors to be appointed by the Governor of Maharashtra, the post of Managing Director is occupied by an IAS officer deputed by the State Government and almost all the members of the Board of Directors are senior bureaucrats, except the Chairman and the Vice-Chairman who are normally the Cabinet Minister for Revenue and the Minister of State for Revenue respectively. Though the respondent no.1 is expected to generate its own income from the cultivation of thousands of hectors of land which came in possession of the State Government, as and when required the State Government has been sanctioning additional funds to the said respondent for running its activities which are required to be carried out strictly as per the Articles of Association.

4. It appears that an administrative decision was taken to close certain departments which were not found to be effectively contributing to the economic activities of the respondent-company and accordingly by an order dated

21.5.1993 the Stores and Purchase department came to be abolished by the Managing Director of respondent no.1. The resolution by circulation dated 31.7.1993 was taken out to abolish certain posts including the petitioner's post and in the 260th meeting held on 28.8.1993 the Board of Directors accepted the new staffing pattern which excluded the post of Controller of Stores and Purchase and some other posts. It is further required to be noted that after the office order dated 21.5.1993 was issued by the Managing Director, respondent no.1-company announced a voluntary retirement scheme by its circular dated 23.6.1993 and the said scheme was made applicable in the first phase to the employees working on Belwandi, Changdeonagar, Gangapur, Harigaon, Laxmiwadi, Ravalgaon, Sakarwadi and Tilaknagar farms as well as the employees in the head office. As per the said scheme, the employees accepting the VRS would be paid the monetary compensation at the rate of one and half months pay (basic + dearness allowance) for each completed year of service and the amount that may be arrived at by multiplying the balance number of months service remained till the age of superannuation by one month's pay and there was no right to claim any additional compensation either under the Industrial Disputes Act, 1947 or under any statutory provisions, if applicable. The petitioner responded to the said scheme by submitting his application dated

28.6.1993 presumably perhaps he was responding to the fact that the department he was heading the department which was ordered to be closed down. As per the impugned order dated 28.9.1993 the said application for VRS was rejected. On receiving the termination orders, the petitioner submitted an appeal dated 5.10.1993 to the Minister for Revenue who was the Chairman of respondent no.1 company. The appeal concluded in para 3 in the following words:

> "In view of the facts and circumstances explained hereinabove, I make this humble appeal with a request to give suitable directives to the corporation to accept my request for voluntary retirement and give all the monetary benefits as are admissible under the voluntary retirement scheme, 1993 for which purpose I will forever be grateful to you."

Though the petitioner claims that the Chairman passed an order of stay to the termination order on or about 24.2.1994 he was informed by a communication dated 6.9.1994 that his appeal was dismissed on account of abolition of the post held by him and the Stores and Purchase Department having been closed as per the order dated 21.5.1993. The appeal was held to be devoid of merits and therefore dismissed. This order also has been challenged by way of amendments with the leave of this

Court.

5. While granting Rule, no interim relief was ordered in this petition and in fact Rule earlier issued on interim relief came to be discharged by the order dated 10.11.1996. When the petition was taken up for final hearing on 3.3.2003, the petitioner's proposal to approach respondent no.1 with a fresh request for extending benefits of the VRS was noted and he was granted liberty accordingly. Respondent no.1 was required to consider such representation objectively and, of course, without prejudice to their rights and contentions, but with an endeavour to resolve the dispute amicably within four weeks. Though the petitioner submitted fresh representation, it appears the same was turned down. On 28.6.2004, the petition was dismissed for nonprosecution and pursuant to the order passed in CA (ST) No.18379 of 2004 it was restored and directed to be heard peremptorily. The State of Maharashtra, through the revenue ministry, has not filed any reply, though the respondent no.1 has opposed the petition by filing the replies.

6. Having considered the arguments advanced by both the parties before us, the following issues arise for our considerations in this petition.

(a) Legality of the decision taken by respondent no.1-company, to close the Stores and Purchase Department and to abolish the post held by the petitioner, i.e. Controller, Stores and Purchase Department.

(b) Legality of the impugned order of termination.

(c) Whether the petitioner would be entitled for absorption in other equivalent post or for the benefit of voluntary retirement as per the scheme of 1993 even on answering the above two issues against him.

(d) If the first issue is answered against the Corporation, whether the petitioner will be entitled for reinstatement with consequential reliefs.

Continued on 27.3.06

7. On the first issue regarding the decision of the Corporation to wind up the Stores and Purchase Department and declare the post of Controller, Stores and Purchase as surplus, we have noted that the Articles of Association governed the management of the Corporation. Article 71 deals with the maximum number of Directors and as per Article 72 the Directors shall be appointed by the Governor. The Governor shall have the power to remove any Director including the Chairman or the Vice Chairman at any time in his absolute discretion and the Governor will have the right to fill in any vacancy in the office of a

Director caused by retirement, removal, resignation, death or otherwise. As per Article 73, the Board of Directors of the Corporation shall be entitled to exercise all such powers and to do all such acts and things as the Corporation is authorised to exercise, save and except that the Board will not be exercising such powers which are required to be exercised or done by the company in its General Meeting. Article 74 deals with the specific powers of the Board. As per Article 81, the Managing Director or in his absence the Secretary may at any time convene a meeting of the Board of Directors and the questions arising at any meeting shall be decided by majority of votes. As per Article 82, a meeting of the Board of Directors shall be held for the despatch of the business of the company atleast once in every three calender months and under Article 83 the quorum for a meeting of the Board of Directors shall be one-third of its strength or two Directors, whichever is higher. Under Article 84, a meeting of the Board of Directors for the time being at which a quorum is present, shall be competent to exercise all or any of the authorities, powers and discretion by or under the Articles of the company for the time being vested in or exercisable by the Board of Directors generally. As per Article 89, a resolution in writing signed by all the Directors shall, subject to section 289 of the Act, be as valid and

effectual as if it has been passed at a meeting of the Board of Directors duly called and constituted. It is thus clear that the Board of Directors is responsible for the management of the Corporation and to take decisions in discharge of its functions to manage the Corporation. The Board is assisted by the Managing Director, at the first place and the Secretary. The Managing Director is the Chief Officer of the Corporation and reporting to the Board of Directors. The Chairman and Vice Chairman of the Corporation are the Minister for Revenue and State Minister for Revenue respectively and nominated by the Governor. The Board has the authority to take due administrative actions to revamp the Corporation's different arms, sections or departments or farms.

8. On 21.5.1993, an Office Order was taken out by the Corporation under the signature of the Managing Director. In the said order, the workload available to the Stores and Purchase Department was examined and it was decided that abolition of the said department was not against the interest of the Corporation and on the contrary it would be beneficial for its overall business. It was also noted that the Managers of some other departments were given powers for purchases upto certain limits and bulk purchases as such being handled by the Stores and Purchase Department in the Head Office had almost become extinct.

The remaining work of the Stores and Purchase Department on its abolition was distributed amongst the various Departments like Engineering, Farm management, Administration etc and the employees working in the Stores and Purchase Department were directed to be transferred to these three Departments as per the names shown in the order. In support of this issue of decentralisation of the purchase activities, a tender notice dated 14.6.1993 has been placed on record so as to show that the Chief Officer, Farm Management had invited tenders for the purchase of 30000 matric tons of the composed fertilisers and other fertilizers. There are more than one such tender notices which show that the purchase activities were being handled by the respective officers or the Managing Director after the Stores and Purchase Department was closed.

8A. On 23.6.1993, the Corporation announced the Voluntary Retirement Scheme based on the decision that was taken in the 259th meeting of the Board of Directors held on 22.3.1993. In the said meeting of the Board of Directors the Corporation’s prevailing conditions regarding income and expenses as well as the steps to be taken for improvement in its performance, were discussed. The Board was of the view that to curtail the financial liability by way of recurring expenditure, some

departments of the Corporation would be required to be abolished and the employees working in such departments abolished could have to be either offered benefits of the voluntary retirement scheme or absorbed in other departments. The voluntary retirement scheme (VRS) set out the terms and conditions and also the additional financial benefits available to an employee applying for the same. The Scheme was open to all categories of the employees irrespective of their locations. The 260th meeting of the Board of Directors was held on 28.8.1993 to discuss the Agenda circulated including the resolution by circulation dated 31.7.1993. The learned counsel for the Corporation has placed before us the Resolution-Register and we have noted that for the meeting dated 28.8.1993 there was full quorum and the resolution under circulation dated 31.7.1993 was also placed before it. The applications in response to the voluntary retirement scheme were also placed before the Board and the resolutions came to be passed unanimously. Resolution no.4(c) stated that the Corporation shall abolish the following four posts: (i) Controller, Stores and Purchases, (ii) Marketing Manager, (iii) Superintendent, Selection Group and (iv) Deputy Executive Engineer (Civil), as the departments headed by these officers were to be abolished and the activities to be carried out by these departments will be merged with some other

departments.

8B. There is no dissent to the resolution passed in the meeting held on 28.8.1993 and the Board further authorised the Managing Director to take steps for implementation of the said resolution. The Articles of Association do not require the resolutions to be approved by the Government or His Excellency the Governor unless such resolutions were regarding additional financial requirements, engagement of officers of a particular scale, additions to the departments and removal of certain officers by way of punishment or their suspension. Passing of the resolution to abolish certain departments and to declare the concerned heads as surplus as passed by the Board of Directors on 28.8.1993, in our considered opinion, did not require prior sanction of the State Government or His Excellency the Governor. The abolition of the post of Controller, Stores and Purchase, relates back to the order passed by the Managing Director on 21.5.1993, the circulated resolution dated 31.7.1993 and finally the resolution passed by the Board of Directors in its 260th meeting held on 28.8.1993. We do not agree with the arguments advanced before us regarding the alleged illegality of the resolutions or decisions taken. We hold that the decisions of the Corporation to abolish the departments, like Stores and Purchase and Marketing etc

and consequently declare the heads of those departments as surplus, do not suffer from any illegality or the Board has not acted without powers. Even though, the Corporation is a public sector undertaking and a State instrumentality under Article 12 of the Constitution, it cannot be deprived of its powers to streamline its activities to make it financially more viable and/or to enable it to come out of the financial crises. Allowing such undertakings to shed its extra fat would certainly better the public interest. To ease the financial burden, when faced with unfavourable business conditions and continued losses, the State undertakings ought to be allowed to abolish some of its departments and dispense with the surplus staff. We must recognise the respondent Corporation’s power to abolish certain posts to streamline its activities and remove the concerned employees when faced with continued losses.

9. Consequently, the next issue that we are required to consider is the challenge to the impugned order passed by the Managing Director on 28.9.1993 informing the petitioner that he would stand terminated from the employment of the Corporation from 30.9.1993 and the order dated 30.9.1993 terminating the petitioner’s service from that date. The first order dated 28.9.1993 has been passed by the Managing Director, whereas the second order

dated 30.9.1993 has been passed by the Chief Administrator (Finance) on the basis of the first order. Mrs Doshi, learned counsel for the petitioner, has challenged these orders on various grounds. It was submitted that the respondent-Corporation, being the State instrumentality within the meaning of Article 12 of the Constitution, it has to act in fairness and the right of equality guaranteed under Article 14 of the Constitution was denied to the petitioner. The impugned orders were arbitrary, capricious and were not supported by any authority in law. It was contended that before the said orders were passed, it was necessary for the Corporation to seek prior approval from His Excellency the Governor under Article 74(5) of the Articles of Association and this being a condition precedent, failure to obtain such an approval vitiated the order from its inception,i.e. from 28.9.1993 itself. It was alleged that the purchase activities of the Corporation were not reduced, leave alone being totally eliminated and, therefore, there was no justification in terminating the petitioner's service. The petitioner also alleged that the meetings of the Board of Directors were not held before the Office Order dated 21.5.1993 was issued and the reasons stated in the said order were, ex-facie, bad and were set out with an ulterior motive. The learned counsel for the petitioner also challenged the authority of the Managing Director to

circulate the Board resolution on 31.7.1993. The reasons for abolition of the posts were illegal and were malafide. The impugned orders were passed in colourable exercise of the management's powers. It was further submitted that there being no service Rules framed by the Corporation, the power to terminate an officer's service simplicitor on account of the post having been declared as surplus was not available with the Corporation and in any case such power could not be exercised without prior approval of the Governor under Article 74(5).

10. Per contra, Mr Naik, learned counsel for the Corporation, has at the threshold taken an objection to the maintainability of the petition on the ground that the Corporation is not a State instrumentality within the meaning of Article 12 of the Constitution and in any case the impugned orders were based on the resolutions passed by the Corporation, i.e. the Board of Directors, who have the ultimate responsibilities for the management of its affairs. As per Mr Naik, Article 74 (5) did not come into play in the case of discharge simplicitor and the impugned orders did not amount to an order of removal or an order of punishment. He denied that the orders suffered from any malice, arbitrariness or colourable exercise of the management's powers. The Corporation decided to revamp its activities so as to reduce its financial liability and

accordingly the Board had resolved to abolish certain departments and the Stores and Purchase was one such department headed by the petitioner. As the department was decided to be abolished, the Board of Directors in its meeting held on 28.8.1993 decided to declare the post of Controller-Stores and Purchase, as surplus and, therefore, the petitioner came to be terminated from the service by the impugned orders by way of discharge simplicitor and the said order is neither stigmatic nor by way of any penal action. The petitioner was removed from the service solely for the reason that his post was abolished and he was found surplus.

Continued on 28.3.2006

11. On the first objection by the Corporation on the maintainability of this writ petition, we have considered the Articles of Association and the decisions of the Apex Court in the case of Ajay Hasia and others Vs. Khalid Mujib Sehravardi and ors, (1981) 1 SCC 722, Pradeep Kumar Biswas, (2002) 5 SCC 111, and MS Zee Telephilm Ltd Vs Union of Inia, AIR 2000 (5) SCC 2677. We have no doubt, in our mind, that the Government of Maharashtra exercises functional, financial and managerial control over the

respondent-Corporation and the said control is deep and pervasive. Hence, we reject the contention that the respondent-Corporation does not fall within the ambit of Article 12 of the Constitution.

12. Article 74 (5) reads thus:-

> "74 (5). To appoint and at their discretion, remove or suspend such managers, secretaries, officers, clerks, agents and servants for permanent, temporary or special services as it may from time to time, think fit, and to determine its powers and duties and fix their salaries or emoluments and to require security in such instances and to such amount as it thinks fit;
>
> provided that no appointment to a post, the maximum pay of which is more than Rs.1500/- per mensum shall be made without the prior approval of the Governor and no such officer shall be suspended, removed or in any way penalised in his service matters without the prior approval of the Governor."

The learned counsel for the petitioner has placed reliance on the proviso in support of her contentions that the impugned orders are orders of removal and, therefore, they could not have been issued without the prior approval of the Government. Per contra, the Corporation states that

the Articles of Association are binding on it for the purposes of carrying out its activities and the same cannot be relied upon by the employees while challenging the orders of termination as they do not form the service conditions nor can they be treated as the service Rules.

13. The respondent-Corporation, being the State instrumentality, the termination of service of any employee is subject to challenge on the ground of arbitrariness, unfairness as well as inequality. Such challenge will have to be tested on the backdrop of Articles 14 and 21 of the Constitution. Admittedly, the petitioner was holding the post of Controller, Stores and Purchase, in the pay scales of Rs.1100-1700 and the said post squarely fell within the ambit of the proviso below to Article 74(5). We have no doubt in our mind that if an officer in the pay scales of Rs.1100-1700 is sought to be suspended, removed or in any way penalised by the respondent-Corporation the prior approval of the Governor shall be a condition precedent. However, in the instant case, we have to examine whether the impugned orders of termination amounted to orders of removal as contemplated under the proviso to Article 74(5) and this issue is no more res integra in view of the decision in the case of M.Ramanatha Pillai Vs State of Kerala and another, (1973) 2 SCC 650 wherein it has been held by the Constitution

Bench that the termination of service on account of abolition of the post does not amount to dismissal or removal in service jurisprudence. We have already held that the decision of abolition of the post in the instant case did not suffer from any illegality and there is no dispute that the impugned orders do not carry any stigmatic remark or they do not attach any stigma against the petitioner. It is an order of discharge simplicitor and solely on the ground that the post held by the petitioner was abolished as it was declared surplus. Even in the reply filed by the respondent-Corporation it has been clarified in no uncertain terms that the sole reason for the termination of the petitioner's service is the abolition of the post he held and the respondent-Corporation does not hold any grudge against the petitioner nor does it say that the petitioner's service record was in any way adverse or blameworthy. Following the law laid down in the case of M.Ramanatha Pillai (supra) we hold that the proviso to Article 74(5) of the Articles of Association is not attracted in the instant case and it was not necessary for the Corporation to obtain the prior approval of His Excellency the Governor before and for issuing the impugned orders.

14. It was pointed out by the learned counsel for the petitioner that in the Board meeting held on 28.8.1993 the

Corporation had decided to abolish four posts but in fact only two posts were abolished viz. Controller, Stores and Purchase and Marketing Manager, whereas the remaining two posts,i.e. Superintendent (Selection Grade) and Deputy Executive Engineer (Civil) were not abolished. This amounted to discrimination, unfairness and arbitrariness on the part of the respondent-Corporation while issuing the impugned termination orders, as per the learned counsel for the petitioner. We have noted that the post of Superintendent (Selection Grade) was in the pay scales of Rs.680-1250 and the post of Deputy Executive Engineer (Civil) was in the pay scales of Rs.600-1150 whereas the post of Controller- Stores and Purchase, and Marketing Manager were in the pay scales of Rs.1100-1700. The holders of the posts of Superintendent and Deputy Executive Engineer have been subsequently given the benefits of voluntry retirement scheme some time in the year 1994-95. It is also clear from the record that no one else was appointed as Controller-Stores and Purchase, after the impugned termination orders have been issued and if the Corporation continued with the surplus posts for few months or even more than one year, in a lower pay scale, that, by itself, would not vitiate the impugned orders. We have noted that at the relevant time there were two sanctioned posts of Superintendent and only one post was filled in. Similarly, against the two sanctioned

post of Deputy Executive Engineer, only one post was filled in and, therefore, if the sole occupant of the post was continued for few months or over a year that, by itself, would not be reason to hold that that the guarantee under Article 14 of the Constitution was denied to the petitioner or his right under Article 21 was taken away. We thus uphold the impugned orders as being legal and in exercise of the employer's inherent power.

15. We now come to the issue of the benefit of voluntary retirement scheme (for short, "VRS"), which was claimed by the petitioner in his appeal submitted to the Chairman of the Corporation, i.e. the Minister for Revenue, Government of Maharashtra. We have been informed that the appeal came to be dismissed as noted earlier and even pursuant to the order dated 13.3.2003 the petitioner had applied for the benefit of the VRS and the same request was turned down for the second time vide order dated 25.7.2003 passed by the Managing Director. It states that the Board of Directors of the Corporation was unable to accept his request for granting the benefit of VRS.

15A. The VRS announced by the Corporation on 23.6.1993 pursuant to the resolution passed in the 259th Board meeting held on 22.3.1993 set out the terms and

conditions. The said scheme was applicable to all the categories of employees and irrespective of their location. It was also not stated that the extension of the scheme was subject to the approval by the State Government or by the Chairman of the Corporation. Schedule "A" to the scheme announced on 23.6.1993, inter alia, stated that the employees facing disciplinary action would not be given benefit of the VRS unless the proceedings were concluded. Similar was the restriction in the case of the employees against whom court cases were pending. The last two clauses in the said schedule to the VRS read as under:

> "The Corporation reserves the right to accept or reject the application for voluntary retirement.
>
> "The date of implementation of the Voluntary Retirement Scheme will be declared by the Managing Director."

In the 260th meeting of the Board of Directors the resolution passed in respect of the VRS read as under:

> "As per the decision of Board of Directors, the Managing Director has been delegated with the powers to take decisions as regards to sanction the applications of those employees who have accepted the voluntary retirement, under the voluntary retirement scheme made applicable to the employees from eight Farms, being running in losses and from

the head-quarter (head-office) and to pay them pension etc."

The petitioner's application dated 28.6.1993 was admittedly received and the Managing Director did not pass and communicate any order to the petitioner rejecting the said application till the impugned order dated 28.9.1993. The application was submitted after the Office Order dated 21.5.1993 was passed and before the Circular/Resolution dated 21.7.1993. As per the scheme, the petitioner was eligible to apply for its benefits. We are, therefore, required to consider whether the petitioner ought to have been given the benefit of VRS rather than issuing the impugned termination orders at the first instance and subsequently whether his appeal was required to be allowed by the Chairman.

16. However, before we decide the same issue, we need to consider the arguments advanced by the learned counsel for the petitioner on yet another issue, viz. absorption of the petitioner in any other equivalent post. The posts equivalent to the post of the Controller-Stores and Purchase at the relevant time were (i) Deputy Chief Executive (FM), (ii) Aggri. FM (iii) Secretary (iv) Controller of Farms. The Deputy Chief Executive (FM) was not filled in and as per the staffing patter finalised as

on 28.4.1993 the same post was vacant and it was decided not to fill in the same. The post of Secretary warranted specific qualifications which the petitioner did not possess and the same is true for the post of Agri.FM. The only other post which could be called to be equivalent was that of the Controller of Farms. As per the staffing pattern finalised on 28.4.1993 there was one sanctioned post which was not filled in and it was decided not to fill in the same. We do not, therefore, agree that it was possible for the Corporation to absorb the petitioner in the any of the equivalent posts rather than issuing the impugned orders dispensing with his service.

17. The law in regard to voluntary retirement scheme, as announced by the public sector undertakings, has been stated by the Apex Court in the case of **Bank of India & ors Vs. O.P.Swarnakar & Ors, JT 2002 (10) SC 436 and Hec Voluntary Retd.Employees Wel.Soc Vs. Heavy Engineering Corpn Ltd, JT 2006 (3) SC 102**. An offer for voluntary retirement in terms of a scheme, when accepted, leads to a concluded contract between the employer and the employee. In terms of such a scheme, an employee has an option either to accept or not to opt thereof. The scheme is purely voluntary, in terms whereof the tenure of service is curtailed which is permissible in law. Such a scheme is ordinarily floated with a purpose of downsizing the

employees. It is beneficial both to the employees as well as to the employer and enhances its utility for the effective functioning of the industrial undertakings. By reasons of such a scheme only an invitation of offer is floated. When pursuant to or in furtherance of such a voluntary retirement scheme an employee opts therefor, he makes an offer which upon acceptance by the employer gives rise to a contract. It is also common knowledge that a scheme of voluntary retirement is preceded by a financial planning and finances are either provided by the government concerned in full or in part. Thus financial implications arising out of implementation of a scheme ought to have been borne in mind by the company, particularly when it is a sick industrial undertaking. Offers of such number of employees for voluntary retirement, in that view of the matter, are to be accepted by the employer only to the extent of finances available therefor. The voluntary retirement scheme speaks of a package. One either takes it or rejects it. While offering to opt for the same, presumably the employee takes into consideration the future implication as well. Once an employee opts to retire voluntarily,in terms of the contract he cannot raise a claim for a higher salary unless by reason of a statute he becomes entitled thereto. 17A. In the instant case, the respondent-Corporation was admittedly facing financial crises on account of the

continued losses, the petitioner fulfilled all the conditions of the scheme and was declared surplus. It has not been stated either by the Managing Director or the Chairman of respondent no.1 -Corporation who dismissed the appeal of the petitioner, that the petitioner was disqualified under the scheme or he was not eligible for the benefits set out therein.

18. If the petitioner's application for VRS was accepted as per the resolution passed on 28.8.1993, there could be no occasion for issuing the impugned termination orders. The respondent-Corporation is a State instrumentality and it was necessary for it to communicate to the petitioner whether his application was accepted or not before the impugned orders were issued. On the other hand such a decision has been informed to him by the impugned order of termination. We are informed that amongst the employees who submitted their applications in response to the VRS announced on 23.6.1993, about 42 of them were approved by the Minister, Revenue, on 15.6.1994 and six of them are officers like the petitioner. The respondent-Corporation advanced only one submission in support of the denial of the benefit of the VRS to the petitioner, viz that though he submitted the application in time, sanction did not come through and when the sanction came through in June,1994, the petitioner was not

in employment. We are not impressed by this justification and more so it is contrary to the impugned order dated 28.9.1993 which stated that the VRS application was rejected. We also called upon the learned AGP to place before us a file deciding the appeal submitted by the petitioner against the impugned orders of termination so as to find any reasons set out therein for denying the benefit of the said scheme to the petitioner. The learned AGP placed before us the register from the Ministry showing that the concerned file was destroyed and, therefore, no record was traceable. When other 42 applications were considered in June,1994 and approved, the petitioner's appeal was pending and the said appeal has been decided on merits. The Corporation does not hold any grudge against the petitioner and it has no complaint against his service record. In these circumstances, there was no reason to deny the benefit of VRS which was specifically floated to give such benefits to the employees who were otherwise found to be surplus and it is the contention of the Corporation itself that the petitioner was one such surplus officer. The unfairness as well as arbitrariness on the part of the Corporation in denying the benefit of the VRS to the petitioner is writ large and this Court had offered one more opportunity to the Corporation vide its order dated 3.3.2003 to consider the petitioner's case. The Corporation did not relent and

as noted earlier the Managing Director vide his order dated 25.7.2003 informed that his request could not be considered. We are not persuaded by the said reason and more particularly keeping in mind that the respondent-Corporation is a State instrumentality within the meaning of Article 12 of the Constitution. The petitioner ought to have been given the benefit of the VRS when he was found to be a surplus officer and there was no possibility of his absorption in another equivalent posts at the relevant time. We have not been shown any other set of service rules governing the service conditions of the officers like the petitioner and framed by the Corporation. As per the petitioner the respondent-Corporation adopted initially the service rules applicable to the State government employees, i.e. Bombay Civil Service Rules and subsequently the Maharashtra Civil Service Rules. The Corporation in reply stated that these Rules have been adopted but not in their entirety and,therefore, the petitioner could not rely upon the same. It further stated that the right to terminate the petitioner’s service emanated from the terms of the appointment originally issued on 18.10.1972 for the post of Assistant. Be that as it may, denial of the benefit of the VRS to the petitioner in response to his application dated 28.3.1993 was unfair, arbitrary and unjust. In fact, the employees who were declared surplus ought to

have been the first beneficiaries of the said scheme before any other applications were considered and, that too, in keeping with the State Government policy. We, therefore, hold that the petitioner is entitled for the benefit of the VRS dated 23.6.1993 and as per the salary payable to him in the month of August,1993 when he was found to be surplus. A VRS announced by a State instrumentality can be enforced in law by way of a contract in favour of an employee who was found to be surplus and could not be absorbed in some other suitable post and who was not otherwise disqualified under the said scheme.

19. In view of our above findings,we need not record our finding on the last issue framed hereinabove and the petition succeeds by extension of the benefit of the VRS and in a way in terms of the petitioner’s appeal submitted to the Chairman of the Corporation. Mrs Doshi, learned counsel for the petitioner urged that the petitioner must get the benefit of interest on the amount payable to him under the VRS. The present precarious financial condition of the respondent-Corporation is well known. We do not deem it appropriate to concede to this request for granting interest on the amount payable to him under the VRS.

20. In the result, the writ petition is allowed partly and Rule is made absolute in terms of the prayer clause (c). The benefits of the voluntary retirement scheme shall be computed and paid to the petitioner within a period of 12 weeks from the date of receipt of the order.

. Certified copy expedited.

(D.B.BHOSALE, J.) **(B.H.MARLAPALLE,J.)**

HIGH COURT
CIVILI APPELLATE SIDE

WRIT PETITION NO.386 1995

Date of Judgment:

23rd, 27th and 28th March, 2006.

For approval and signature

THE HON'BLE MR.JUSTICE B.H.MARLAPPALE.

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?